IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.04.2007

CORAM

THE HONOURABLE MR. JUSTICE T.SUDANTHIRAM

Crl.O.P.No.10098 of 2006
and
Crl.M.P.Nos. 2633 and 2634 of 2006

M. Senthil Kumar ... Petitioner / Third Accused

Versus

M/s. Delta Carriers by its
Proprietor N. Rajkumar
represented by its Power Agent
Nataraj.
... Respondent/Complainant

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in C.C.No.347 of 2005 on the file of Judicial Magistrate No. I, Udumalpet, Coimbatore and quash the entire proceedings as against the petitioner is concerned.

For Petitioner : Mr.V. Jeevagiridharan
For Respondent : Mr. V. Nicholas

O R D E R

This is a petition seeking to quash the proceedings against the petitioner, who is the Accused No.3 initiated by the respondents herein/ complainant along with two other accused for an offence under section 138 of Negotiable Instruments Act.

2. It was contended by the learned counsel for the petitioner that the petitioner is one of the partner in the firm namely the first accused and he has absolutely nothing to do with the alleged offence under section 138 of Negotiable Instruments Act.

3. It was contended by the learned counsel for the petitioner that the Partnership Dissolution Deed was executed between the petitioner and the second Accused, another partner on 29.09.2004

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and it was communicated to the complainant prior to the issuance of the Cheque in question. Another contention of the learned counsel for the petitioner was that no specific averment is made in the complaint against the petitioner fulfilling the requirements under section 141(1) of the Negotiable Instruments Act. According to the learned counsel for the petitioner only a vague allegation was made against the petitioner in paragraph 5 of the complaint. He also placed reliance on the decision of the Hon'ble Supreme Court in "CDJ 2007 SC 216 (S.M.S. Pharmaceuticals Ltd ..vs.. Neeta Bhalla and another ".

4. The learned counsel for the respondent was also heard. The learned counsel for the respondent denied with regard to the alleged fact of communication to the complaint about the dissolution of partnership. The learned counsel for the respondent submitted that the averments made in the complaint that, 'the second and third accused partners of the firm first accused were directly managing the affairs of the company', is sufficient to bring them liable and it is not necessary for the complainant to specifically reproduce wordings of the section 141 of the Negotiable Instruments Act and the petitioner is vicariously liable. In support of his contention, he placed reliance on the decision of the Hon'ble Supreme Court reported in "(2004) 7 Supreme Court Cases 15 (Monaben ketanbhai shah and another ..vs.. State of Gujarat and others " and " (2006) 10 Supreme Court Cases 581 (Sabitha Ramamurthy and another ..vs.. R.B.S. Channabasavaradhya) ".

5. As far as the first contention of the learned counsel for othe petitioner is concerned, it is not sustainable since a xerox copy of the Partnership Dissolution Deed is filed along with quash petition. At this stage, this court cannot place any reliance on such documents and cannot act further to decide the question of fact.

6. With regard to the second contention of the learned counsel for the petitioner that no specific allegation is made against the petitioner that he was incharge of and responsible with the company/firm in the conduct of its business in the material time when the offence was committed; a careful consideration is necessary. The learned counsel for the respondent placed reliance on the decision reported in "(2004) 7 Supreme Court Cases 15 (Monaben ketanbhai shah and another ..vs.. State of Gujarat and others " wherein it is stated that

> "It is not necessary to reproduce the language of Section 141 verbatim in the complaint since the complaint is required to be read as a whole. If the substance of the allegations

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made in the complaint fulfil the requirements of Section 141, the complaint has to proceed and is required to be tried with. It is also true that in construing a complaint a hypertechnical approach should not be adopted so as to quash the same. The laudable object of preventing bouncing of cheques and sustaining the credibility of commercial transactions resulting in enactment of Sections 138 and 141 has to be borned in mind. These provisions create a statutory presumption of dishonesty, exposing a person to criminal liability if payment is not made within the statutory period even after issue of notice. It is also true that the power of quashing is required to be exercised very sparingly and where, read as a whole, factual foundation for the offence has been laid in the complaint, it should not be quashed. "

Though the learned counsel had read out those portions mentioned above, in the same paragraph, it is further stated that

"All the same, it is also to be remembered that it is the duty of the court to discharge the accused if taking everything stated in the complaint as correct and construing the allegations made therein liberally in favour of the complainant, the ingredients of the offence are altogether lacking. "

Now, it becomes necessary to see whether the present case falls in this category.

7. The other decision on which the learned counsel for the respondent relied on " (2006) 10 Supreme Court Cases 581 (Sabitha Ramamurthy and another ..vs.. R.B.S. Channabasavaradhya) ". It is stated that

" It may be true that it is not necessary for the complainant to specifically reproduce the wordings of the section but what is required is a clear statement of fact so as to enable the court to arrive at a prima facie opinion that the accused are vicariously liable."

8. In fact, in the same paragraph, it is also observed by the Hon'ble Supreme Court that

"Before a person can be made vicariously liable, strict compliance with the statutory requirements would be insisted..... In a case where the court is required to issue summons which would put the accused to some sort of harassment, the court should insist

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strict compliance with the statutory requirements."

9. In view of the two decisions cited above, it is to be seen that whether the words in the complaint against the petitioner make out a specific allegation against the petitioner. In the decision cited by the learned counsel for the petitioner reported in "CDJ 2007 SC 216 (S.M.S. Pharmaceuticals Ltd ..vs.. Neeta Bhalla and another " , it is held by the Hon'ble Supreme Court that,

" The liability of a Director must be determined on the date on which the offence is committed. Only because Respondent No.1 herein was a party to the purported resolution dated 15.02.1995 by itself does not lead to an inference that she was actively associated with the management of the affairs of the Company. This Court in this case has categorically held that there may be a large number of Directors but some of them may not associate themselves in the management of the day to day affairs of the Company and, thus, are not responsible for conduct of the business of the Company. The averments must state that the person who is vicariously liable for commission of the offence of the Company both was incharge of and was responsible for the conduct of the business of the Company. Requirements laid down therein must be read conjointly and not disjunctively. When a legal fiction is raised, the ingredients therefore must be satisfied."

10. In that particular case decided by the Hon'ble Supreme Court, the allegation made was narrated in paragraph 3.

"3. In the complaint petition the allegations made inter alia are as under:

" The Accused No.1 is a duly incorporated Company, having its registered office at the address mentioned above, represented by the Director, Accused No.2. The Accused No.3 and 4 are also the Directors of the Accused No.1 Company and the accused 2 to 4 are actively involved in the management of othe affairs of the Accused No.1 Company."

For such an allegation, the Hon'ble Supreme Court held that in paragraph 23 that

"On a plain reading of the averments made in the complaint petition, we are satisfied that

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the statutory requirements as contemplated under Section 141 of the Act were not satisfied."

11. Now, it is seen the allegations made in the complaint of this case, it is no way better than the allegations made in the complaint of the case decided by the Hon'ble Supreme Court and infact only similar to that.

12. The averments made in paragraph 5 of the complaint in C.C.No. 347 of 2005 is that

1ம் எதிரியின் நிறுவனத்தில் 2,3 எதிரிகள் பங்குதாரர்களாக இருந்து கொண்டு மேற்படி நிறுவனத்தின் அனைத்து நடவடிக்கைகளையும் நேரடியாக நிர்வாகம் செய்து வருகின்றனர்.

It is clear that it is only stated that the petitioner was managing the affairs of the Company. Now, this court has no other option except to follow the ratio laid down by the Hon'ble Supreme Court reported in "CDJ 2007 SC 216 (S.M.S. Pharmaceuticals Ltd ..vs.. Neeta Bhalla and another " and hold that the averments made in the complaint against the petitioner do not satisfy the requirements as contemplated under section 141 of the Negotiable Instruments Act, and as such the proceedings against the petitioner in C.C.No.347 of 2005 on the file of Judicial Magistrate No. I, Udumalpet, Coimbatore are quashed. The learned Judicial Magistrate No.I, Udumalpet, is directed to expedite the trial as expeditiously as possible in respect of other Accused. This Criminal Original Petition is allowed. Consequently, the connected Crl.M.P.Nos.2633 and 2634 of 2006 are also closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

mra

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To

The Judicial Magistrate No. I, Udumalpet, Coimbatore

1 cc to M/s. V. Jeevagiridharan, Advocate, sr. 21016
1 cc to M/s. V. Nicholas, Advocate, sr. 21071

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